

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENTAL ENFORCEMENT SECTION

FACSIMILE COVER SHEET

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MESSAGE

Tom, Per our conversation. gs

* * * *

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHEMETCO, INC.,

Defendant.

CIVIL ACTION
No.

COMPLAINT

Plaintiff United States of America, at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA" and "U.S. EPA Administrator"), by the authority of the Attorney General and through its undersigned attorneys, alleges as follows:

NATURE OF ACTION

1. This is a civil action pursuant to Section 301(a) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), and Sections 3008(a) and 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6928(a) and 6973, in which the United States seeks injunctive relief and civil penalties for Chemetco Inc.'s ("Chemetco" or "Defendant") violations of the CWA and RCRA at Chemetco's smelting facility in Hartford, Illinois ("Hartford

Facility").

JURISDICTION AND VENUE

2. This court has jurisdiction over the subject matter of this action pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b); RCRA Section 3008(a), 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345, and 1355. Notice of commencement of this action has been given to the State of Illinois through the Illinois Environmental Protection Agency ("IEPA"), as required by CWA Section 309(b), 33 U.S.C. § 1319(b), and RCRA Section 7003(c), 42 U.S.C. § 6973(c).

3. Venue is properly in this District because it is the judicial district in which Chemetco's Hartford Facility is located and where the alleged violations occurred.

DEFENDANT

4. Chemetco is a corporation organized and existing under the laws of the State of Delaware, which is qualified to do business in the State of Illinois. At all times relevant to this Complaint, Chemetco has been a "person" within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5), and RCRA Section 1004(15), 42 U.S.C. § 6903(15), and Title 35 of the Illinois Administrative Code (35 IAC 720.110, and is subject to the regulations promulgated pursuant to RCRA Subtitle C, 42 U.S.C. §§ 6921-6939, and the analogous Illinois regulations as part of the applicable State hazardous

waste management program for the State of Illinois.

5. The Hartford Facility, which is owned and operated by Chemetco, is a secondary copper smelter located at Route 3 and Oldenburg Road in Hartford, Illinois. At the Hartford Facility, Chemetco operates four 70-ton top-blown rotary furnaces (known as "converters"), which bronze, smelt, and refine copper and other metal-bearing scrap. Particulate matter in the converters' exhaust gasses is captured by a tandem double quencher/venturi scrubber that produces a zinc oxide material.

STATUTORY FRAMEWORK

Clean Water Act

6. The objective of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of the waters of the United States. See 33 U.S.C. § 1251(a).

7. CWA Section 301(a), 33 U.S.C. § 1311(a), inter alia, prohibits the discharge of any pollutant into navigable waters of the United States by any person except in compliance with the terms and conditions of a National Pollutant Discharge Elimination System ("NPDES") permit issued either by U.S. EPA or an authorized state pursuant to CWA Section 402, 33 U.S.C. § 1342.7.

8. CWA Section 402, 33 U.S.C. § 1342, provides that EPA, or a state authorized to carry out the NPDES program, may issue

NPDES permits for the discharge of pollutants upon the condition that such discharge will meet certain specific requirements of the CWA and such other conditions as the U.S. EPA Administrator determines are necessary to carry out the provisions of the CWA.

9. "Pollutant" as defined at CWA Section 502(6), 33 U.S.C. § 1362(6), means "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes . . . and industrial, municipal, and agricultural waste discharged into water"

10. "Point source" as defined in CWA Section 502(14), 33 U.S.C. § 1362(14), means "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure . . . from which pollutants are discharged."

11. "Navigable waters" as defined in 40 C.F.R. § 110.1, means, "the waters of the United States, including the territorial seas," including but not limited to "(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce . . . ; (b) Interstate waters, including interstate wetlands; (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the

use, degradation, or destruction of which would affect or could affect interstate or foreign commerce"

12. CWA Section 402(p), 33 U.S.C. § 1342(p), requires U.S. EPA to establish NPDES permit application requirements for storm water discharges associated with industrial activities. These regulations primarily are set forth at 40 C.F.R. § 122.26. The Hartford Facility's Standard Industrial Code, "nonferrous metals manufacturing," is one of the industrial categories that are regulated under the storm water regulations. See 40 C.F.R. § 122.26 (b)(14)(i), and 40 C.F.R. Subchapter N, Part 421.

13. The term "storm water discharge associated with industrial activity" means "the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage area at an industrial plant" The term includes but is not limited to, "storm water discharges from . . . sites used for residual treatment, storage or disposal; . . . and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water." 40 C.F.R. § 122.26 (b)(14).

14. CWA Section 309(a)(3), (b) and (d), 33 U.S.C. § 1319(a)(3), (b) and (d), authorizes the U.S. EPA Administrator

to issue an administrative order or commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation of CWA Section 301, 33 U.S.C. § 1311.

15. CWA Section 309(b) and (d), 33 U.S.C. § 1391(b) and (d), provides that any person who violates CWA Section 301, 33 U.S.C. § 1311, or any administrative order issued under CWA Section 309(a), 33 U.S.C. § 1319(a), shall be subject to injunctive relief and the assessment of a civil penalty not to exceed \$25,000 per day for each violation occurring prior to January 30, 1997, and \$27,500 per day per violation for violations occurring on or after January 30, 1997. CWA § 309(b), 33 U.S.C. § 1391(b), as amended by Pub. L. No. 104-134. See, 61 Fed. Reg. 69,360 (1996).

Resource Conservation and Recovery Act

16. RCRA establishes a comprehensive regulatory program for the management of hazardous wastes. See 42 U.S.C. § 6902 and § 6921 et seq. Pursuant to this statutory scheme, U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260-271 (1996), identifying and listing hazardous wastes, and establishing standards applicable to generators and transporters of hazardous wastes, and facilities that treat, store, or dispose of hazardous wastes ("TSD facilities").

17. RCRA Section 3008(a), 42 U.S.C. § 6928(a), authorizes the U.S. EPA Administrator to commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief including requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, 42 U.S.C. §§ 6921 to 6939.

18. RCRA Section 3005, 42 U.S.C. § 6925, generally prohibits the operation of any TSD facility except in accordance with a RCRA permit.

19. RCRA Section 3005(e), 42 U.S.C. § 6925(e), provides that the owner or operator of a TSD facility which was in existence on November 19, 1980, may obtain "interim status" to continue operating such facility until final action is taken with respect to its RCRA permit application, if such owner or operator: (a) files with EPA, in accordance with RCRA Section 3010(a), 42 U.S.C. § 6930(a), a timely notice stating the location and general description of its activities and the hazardous wastes handled by the facility; and (b) submits a timely application for a hazardous waste permit authorizing such activities.

20. The regulations found at 40 C.F.R. § 265.1 provide that the standards established in 40 C.F.R. Part 265 apply to the

owners and operators of TSD facilities that were in existence on November 19, 1980, whether or not such TSD facilities fulfilled the conditions for "interim status" set forth in RCRA Section 3005(e), 42 U.S.C. § 6925(e).

21. Pursuant to RCRA Section 3006, 42 U.S.C. § 6926, a State may obtain authorization to administer a RCRA hazardous waste management program in that State if the State's program is, among other things, equivalent to and consistent with the Federal program for management of hazardous wastes.

22. RCRA Section 3004, 42 U.S.C. § 6924, required EPA to set standards for owners and operators of TSD facilities. EPA has promulgated two sets of standards for owners and operators of TSD facilities. Standards applicable to those facilities that have been issued a final permit are codified at 40 C.F.R. Part 264. Standards applicable to facilities that have qualified for "interim status" (i.e., facilities that have qualified to be treated as having interim status under Section 3005 of RCRA, 42 U.S.C. § 6925, before a final permit has been issued), are codified at 40 C.F.R. Part 265.

23. Where U.S. EPA authorizes a State hazardous waste program pursuant to RCRA Section 3006, 42 U.S.C. § 6926, the requirements of the State program are effective in lieu of the

Federal hazardous waste management program set forth in 40 C.F.R. Parts 260-271.

24. Pursuant to RCRA Section 3006, 42 U.S.C. § 6926, the State of Illinois adopted regulations governing management of hazardous wastes in Illinois, including regulations covering permits, groundwater monitoring, financial responsibility, and closure and post-closure requirements, as set forth at 35 Ill. Admin. Code Parts 720 et seq. Illinois' standards for TSD facilities that were in existence on November 19, 1980 are codified at 35 Ill. Admin. Code Part 725.

25. Facilities in Illinois that qualify for interim status under RCRA Section 3005(e), 42 U.S.C. 6925(e), are regulated under the Illinois regulations set forth at 35 IAC Part 720 et seq., with the exception of those requirements of the Hazardous and Solid Waste Amendments of 1984 ("HSWA") that Illinois is not authorized to administer.

26. Pursuant to RCRA Section 3004(d) - (f), 42 U.S.C. § 6924(d) - (f), certain substances are prohibited from being disposed of on land. In addition, RCRA Section 3004(g), 42 U.S.C. § 6924(g), required EPA to promulgate regulations prohibiting the land disposal of certain hazardous wastes except for methods of land disposal which EPA determined would be

protective of human health and the environment for as long as the waste remains hazardous. The "land disposal restrictions" promulgated by EPA pursuant to RCRA Section 3004(g) are codified at 40 C.F.R. Part 268. These regulations identify hazardous wastes that are restricted from land disposal and define those limited circumstances under which an otherwise prohibited waste may continue to be land disposed. In addition, these regulations set forth certain notice and record keeping requirements with respect to the shipment and disposal of hazardous wastes that are subject to the land disposal restrictions.

27. Pursuant to RCRA Section 3006, 42 U.S.C. § 6926, U.S. EPA granted the State of Illinois interim authorization on May 17, 1982, and final authorization on January 31, 1986, to operate a portion of the hazardous waste program within the State of Illinois. 51 Fed. Reg. 3778. To date, the State of Illinois has not been granted authorization to administer and enforce land disposal restrictions that have been promulgated by U.S. EPA pursuant to RCRA Section 3004, 42 U.S.C. § 6924. Pursuant to RCRA Section 3006(g), 42 U.S.C. § 6926(g), Federal regulations implementing the land disposal restrictions, including the regulations codified at 40 C.F.R. Part 268, are applicable to TSD facilities in Illinois.

28. RCRA Section 3008(a), 42 U.S.C. § 6928(a), authorizes EPA to enforce State regulations in those States authorized to administer a hazardous waste program.

29. RCRA Section 3008, 42 U.S.C. § 6928, authorizes U.S. EPA to institute enforcement proceedings concerning violations of RCRA and the regulations promulgated thereunder. RCRA Section 3008(a)(1), 42 U.S.C. § 6928(a)(1), provides:

whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

30. Under 40 C.F.R. § 261.2, a "solid waste" is any material that is abandoned, recycled, or inherently waste-like. A "hazardous waste" is a solid waste that exhibits any of the four characteristics listed in 40 C.F.R. §§ 261.21-261.24, which include ignitability, corrosivity, reactivity, or toxicity (as measured using the Toxicity Characteristic Leaching Procedure) or that is one of the particular substances listed in 40 C.F.R. §§ 261.31-261.33.

31. RCRA Section 3002, 42 U.S.C. § 6922, required EPA to

establish standards applicable to generators of hazardous waste. These standards are codified at 40 C.F.R. Part 262, and relate to such matters as hazardous waste determination, container management, labeling, and contingency planning.

32. RCRA Section 3008(a), 42 U.S.C. § 6928(a), provides that upon finding that any person has violated or is violating any requirement of Subchapter III of RCRA, including violations in an authorized State, the United States may file a civil action in federal district court to obtain injunctive relief and a civil penalty.

33. RCRA Section 3008(g), 42 U.S.C. § 6928(g), renders persons who violate any requirement of Subchapter III of RCRA liable for civil penalties in an amount not to exceed \$25,000 per day per violation for violations occurring prior to January 30, 1997, and liable for civil penalties in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997. RCRA § 3008(g), 42 U.S.C. § 6928(g), as amended by Pub. L. No. 104-134. See, 61 Fed. Reg. 69,360 (1996).

34. RCRA Section 3008(c), 42 U.S.C. § 6928(c), provides that if a violator fails to take corrective action within the time specified in an administrative compliance order, U.S. EPA may assess a penalty of up to \$25,000 for each day of continued

noncompliance prior to January 30, 1997, and up to \$27,500 for each day of continued noncompliance on or after January 30, 1997. RCRA § 3008(c), 42 U.S.C. § 6928(c), as amended by Pub. L. No. 104-134. See, 61 Fed. Reg. 69,360 (1996).

APPLICABILITY OF THE CLEAN WATER ACT TO THE FACILITY

35. On July 27, 1990, IEPA issued the Hartford Facility NPDES Permit No. IL0025747, which was effective on August 26, 1990 ("1990 NPDES Permit"). The 1990 NPDES permit expired on May 1, 1995, but pursuant to Illinois law, the permit continued in force until it was reissued. A copy of the 1990 NPDES Permit is attached hereto as Exhibit A and is incorporated by reference.

36. On May 20, 1996, IEPA re-issued the 1990 NPDES Permit effective May 20, 1996 ("1996 NPDES Permit"). A copy of the 1996 NPDES Permit is attached hereto as Exhibit B and is incorporated by reference.

37. Chemetco's 1990 and 1996 NPDES Permits authorized the Hartford Facility to discharge storm water (free from process or other wastewater discharges) through a discharge point, designated as Outfall 002, to Long Lake.

38. Chemetco's 1990 NPDES Permit authorized the discharge of storm water in accordance with certain effluent limits established therein. Specifically, the 1990 permit required Chemetco to

conduct regular monitoring and testing and to report monthly to IEPA, using Discharge Monitoring Report ("DMR") forms, on its compliance with the following limits:

Chemetco's 1990 NPDES Permit Effluent Limits		
Parameter	Concentration Limits (mg/l)	
	30 Day Average	Daily Maximum
pH (must be between 6.0-9.0)	Minimum = 6.0 Maximum = 9.0	
Cadmium	0.15	0.3
Copper	0.5	1.0
Lead	0.2	0.4
Nickel	1.0	2.0
Zinc	1.0	2.0
Total suspended solids	15.0	30.0
Iron	2.0	4.0
Manganese	1.0	2.0
Oil (hexane soluble/equiv.)	15.0	30.0

39. Chemetco's 1996 NPDES Permit contains no numeric effluent discharge limitations, however the permit states:

Special Condition 2. For the purpose of this permit, this discharge is limited to storm water, free from process and other wastewater discharges.

* * * *

Special Condition 5

Storm Water Pollution Prevention Plan (SWPPP)

A. A storm water pollution prevention plan shall be developed by the permittee for the storm water associated with industrial activity at this facility. The plan shall identify potential sources of pollution which may be expected to affect the quality of storm water discharges associated with the industrial activity at the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit.

B. The plan shall be completed within 180 days of the effective date of this permit . . . The owner or operator of the facility shall make a copy of the plan available to the Agency at any reasonable time upon request

* * * *

E. The plan shall provide a description of potential sources which may be expected to add significant quantities of pollutants to storm water discharges or which may result in non-storm water discharges from storm water outfalls at the facility

* * * *

G. The permittee shall conduct an annual facility inspection to verify that all elements of the plan, including the site map, potential pollution sources and structural and non-structural controls to reduce pollutants in industrial storm water discharges are accurate . . . Records documenting significant observations made during the site inspection shall be submitted to the Agency in accordance with the reporting requirements of this permit.

* * * *

SPECIAL CONDITION 6. In addition to the monitoring requirements on page 2 of this permit, the permittee shall monitor by using grab samples and report the concentrations in mg/l

[milligrams per liter] of the following constituents on a monthly basis when discharging:

PARAMETER

pH, S.U.
BOD₅
Total Suspended Solids
Oil and Grease
Boron
Cadmium
Copper

PARAMETER

Lead
Manganese
Nickel
Silver
Zinc
Iron (Total)
Total Residual Chrome

* * * *

The results of the sampling analysis shall be included with the monthly discharge monitoring reports

40. Discharge Monitoring Reports ("DMR") submitted to IEPA by Chemetco in accordance with Special Condition 7 of the 1990 NPDES Permit show numerous discharges in violation of certain effluent limits set forth in paragraph above.

APPLICABILITY OF RCRA TO THE FACILITY

41. Chemetco generated, treated, stored, and/or disposed of hazardous waste, "hazardous wastes" as that term is defined in RCRA Section 1004(5), 52 U.S.C. § 6903(5) and 40 C.F.R. § 6930, at the Hartford Facility both prior to and after November 9, 1980, the date that renders facilities subject to the interim status requirements of RCRA Sections 3004 and 3005, 42 U.S.C. §§ 6924 and 6925. These wastes include, but are not limited to,

toxicity characteristic hazardous wastes which have been designated as EPA hazardous waste numbers D006, D007, and D008. As such, Chemetco is subject to the federal regulations adopted pursuant to RCRA Section 3002, 42 U.S.C. § 6922, and codified at 40 C.F.R. Part 262.

42. On November 17, 1980, Chemetco, pursuant to 40 C.F.R. § 270.13, submitted to IEPA Part A of the RCRA permit application indicating that it stored or treated hazardous waste at several units at the Hartford Facility.

43. On November 17, 1985, Chemetco submitted a revised Part A of the RCRA permit application, indicating that it stored or treated hazardous waste at nine units.

44. On November 8, 1985, Chemetco, pursuant to 40 C.F.R. § 270.14, submitted to IEPA Part B of the RCRA permit application, indicating that it stored hazardous waste at only one unit, a zinc oxide storage bunker.

45. On July 7, 1988, Chemetco submitted to IEPA a revised Part A permit application, indicating that it stored hazardous waste at the zinc oxide storage bunker, new filter press, zinc oxide cooling water canal, the floor wash impoundment, and zinc oxide lagoons constructed in 1978.

46. Pursuant to 35 IAC Parts 702, 703, 705, and 720 through

729, on November 3, 1989, IEPA issued Chemetco a RCRA Part B Hazardous Waste Management Permit for the storage of hazardous waste ("RCRA Part B Permit").

47. On March 31, 1993, Chemetco submitted a revised Part B Post-Closure permit application indicating that the "clean closure" standards could not be achieved at the zinc oxide cooling water canal, the floor wash impoundment, and the 1978 zinc oxide lagoon units.

48. On September 18, 1996, representatives of U.S. EPA and IEPA conducted an inspection of the Hartford Facility to determine Chemetco's compliance with RCRA and other federal environmental statutes. During that inspection, the inspectors, while on property owned by Chemetco south of Oldenberg Road, observed what appeared to be waste refractory brick and associated gunning material discarded on the property.

49. On April 16, 1997, a Chemetco representative advised IEPA that the waste refractory brick and gunning material discovered on September 18, 1996, had been generated from one of Chemetco's furnaces.

50. IEPA took samples of the waste refractory brick and gunning material on April 21, 1997. Analyses of the samples indicated that the waste refractory brick and gunning material

contained characteristics of lead equal to or in excess of the toxicity characteristic level of 5.0 mg./l. As such, the waste refractory brick and gunning material are RCRA regulated hazardous wastes. See 40 C.F.R. § 261.24.

51. During the September 18, 1996 inspection of Chemetco's property south of Oldenberg Road, U.S. EPA and IEPA inspectors observed apparent zinc oxide slurry being discharged from 10-inch diameter outfall ("10-inch Pipe") on Chemetco's property into Long Lake, its unnamed tributary, and adjacent wetlands.

52. On September 18, 1996, IEPA took samples of the material being discharged from the 10-inch Pipe. Analyses of the samples indicated that the discharged waste contained concentrations of lead (U.S. EPA Hazardous Waste Number D008) and cadmium (U.S. EPA Hazardous Waste Number D006) equal to or in excess of those substances respective toxicity characteristic levels of 5.0 mg/l and 1.0 mg/l. Therefore the discharged wastes are RCRA regulated hazardous wastes. See 40 C.F.R. § 261.24.

53. On or about, October 7, 1996, Chemetco completed construction of four containment cells for the zinc oxide slurry that had been discharged onto the property south of Oldenburg Road.

54. On or about September 26, 1997, Chemetco completed containment of the zinc oxide discharge on property south of

Oldenberg Road. The discharged zinc oxide was excavated and moved to cell No. 1. The discharged zinc oxide was observed in cell No. 1 by U.S. EPA and IEPA inspectors on September 4, 1997.

55. Zinc oxide is a "solid waste" within the meaning of RCRA Section 1004, 42 U.S.C. § 6903.

FIRST CLAIM FOR RELIEF

NPDES Permit Effluent Limits Violations

56. Paragraphs 1 through 55 are realleged and incorporated herein by reference.

57. Chemetco's 1990 NPDES permit established effluent limits on the discharge of pollutants in the effluent from Outfall 002 at the Hartford Facility. These effluent limits apply, inter alia, to total suspended solids, nickel, zinc, manganese, lead, oil and grease, copper and iron from outfall 002, each of which is a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

58. Chemetco's 1990 NPDES permit requires Chemetco to provide monthly to IEPA, through Discharge Monitoring Reports ("DMRs"), information concerning the mass and concentration of the pollutants in the effluent discharged from each outfall at the Hartford Facility, including those pollutants identified in paragraph 57, above.

59. Chemetco's 1990 NPDES Permit specified daily and

monthly concentration-based storm water effluent discharge limits for the discharge of zinc from Outfall 002.

60. DMRs submitted to IEPA by Chemetco show that since November 1992, the effluent from Outfall 002 exceeded the daily maximum concentration limit for lead six (6) times and the monthly average concentration limit for lead sixteen (16) times.

61. Chemetco's 1990 NPDES permit specified daily maximum and monthly average concentration-based storm water effluent discharge limits for the discharge of total suspended solids from Outfall 002.

62. DMRs submitted to IEPA by Chemetco show that since November 1992, the effluent from Outfall 002 exceeded the daily discharge maximum concentration limit for total suspended solids on at least two (2) occasions and the monthly average concentration limit for Total Suspended Solids on at least five (5) occasions.

63. Chemetco's 1990 NPDES permit specified daily maximum and monthly average concentration-based storm water effluent discharge limits for nickel from Outfall 002.

64. DMRs submitted to IEPA by Chemetco show that since December 1992 the effluent from Outfall 002 exceeded the daily maximum concentration discharge limit for nickel on at least five (5) occasions and the monthly average concentration limit for nickel on at least sixteen (16) occasions.

65. Chemetco's 1990 NPDES permit specified daily maximum and monthly average concentration-based storm water effluent discharge limits for lead from Outfall 002.

66. DMRs submitted to IEPA by Chemetco show that since May 1993, the effluent from Outfall 002 exceeded the monthly average concentration-based discharge limit for lead on at least three (3) occasions.

67. Chemetco's 1990 NPDES permit specify daily maximum and monthly average concentration-based storm water effluent discharge limits for the discharge of copper from Outfall 002.

68. DMRs submitted to IEPA by Chemetco show that since April 1994, the effluent from Outfall 002 exceeded the monthly average concentration discharge limit for copper on at least four (4) occasions.

69. Chemetco's 1990 NPDES permit specified a daily maximum and monthly average concentration-based storm water effluent discharge limit for the discharge of manganese from Outfall 002.

70. DMRs submitted to IEPA by Chemetco show that since January 1993, Chemetco exceeded the daily maximum concentration for manganese at least once, and exceeded the monthly average concentration discharge limit at least fifteen (15) times.

71. Chemetco's 1990 NPDES permit specified daily maximum and monthly average concentration-based storm water effluent discharge limits for iron from Outfall 002.

72. DMRs submitted to IEPA by Chemetco show that since April 1994, Chemetco exceeded the daily maximum concentration for iron at least once, and exceeded the monthly average concentration discharge limit for iron at least once.

73. Chemetco's 1990 NPDES permit specified daily maximum and monthly average concentration-based storm water effluent discharge limits for the discharge of oil and grease from Outfall 002.

74. DMRs submitted to IEPA by Chemetco show that since _____ Chemetco exceeded the daily maximum concentration for oil and grease at least once, and exceeded the monthly average concentration discharge limit for oil and grease at least twice.

75. Pursuant to CWA Section 301, 33 U.S.C. § 1311, the discharges from Outfall 002 in violation of effluent limits established in Chemetco's 1992 NPDES Permit, as described in paragraphs through _____, above are unlawful.

76. Each day Chemetco violated an effluent limit established in its 1992 NPDES Permit is a violation of the CWA.

77. As a result of its violations of the CWA, Chemetco is subject to a civil penalty in an amount not to exceed \$25,000 per day per violation for violations occurring prior to January 30, 1997, and liable for civil penalties in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997. CWA Section 309(d), 33 U.S.C. § 1319(d),

as amended by Pub. L. 104-134. See 61 Fed. Reg. 69,360 (1996).

78. Unless enjoined by Order of this Court, the defendant will continue to violate the CWA.

Second Claim for Relief

Violations of 1996 Permit Conditions

79. Paragraphs 1 through 55 are realleged and incorporated herein by reference.

80. Chemetco's 1996 NPDES Permit requires Chemetco to develop a comprehensive storm water pollution prevention plan P within 180 days of the issuance of the permit, and to implement such plan accordance with the permit conditions within 365 days of the issuance of the permit.

81. Based upon findings of a U.S. EPA compliance evaluation inspection conducted at Chemetco on September 22, 1997, Chemetco at the least has violated the following conditions of the 1996 NPDES Permit:

- A. Failing to complete a storm water pollution prevention plan within 180 days of issuance of the permit (i.e., by November 16, 1996).
- C. Failing to conduct an annual facility storm water inspection within 365 days of permit issuance (i.e., by May 20, 1997), to monitor progress in implementing the storm water pollution prevention plan.

82. Pursuant to CWA Section 301, 33 U.S.C. § 1311, each

violation of a condition included in a NPDES Permit issued pursuant to CWA Section 402 is unlawful.

83. Each day Chemetco violated a condition of its 1996 permit is a violation of the CWA.

84. As a result of its violations of the CWA, Chemetco is subject to a civil penalty in an amount not to exceed \$25,000 per day per violation for violations occurring prior to January 30, 1997, and liable for civil penalties in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997. See CWA Section 309(d), 33 U.S.C. § 1319(d), as amended by Pub. L. 104-134. See 61 Fed. Reg. 69,360 (1996).

85. Unless enjoined by Order of this Court, the defendant will continue to violate the CWA.

Third Claim for Relief

Disposal of Refractory Brick, Gunning Material, and Zinc Oxide Contaminated Soils

86. Paragraphs 1 through 55 are realleged and incorporated herein by reference.

87. Since at least September 1996, Chemetco has handled, stored, released and/or disposed of soil containing zinc oxide, gunning material, and refractory brick in areas adjacent to its facility. The above referenced soils, gunning material, and refractory brick are each a "hazardous-waste" within the meaning

of Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

88. By disposing of hazardous waste soil containing zinc oxide, refractory brick and gunning material on-site without obtaining a hazardous waste disposal permit, Chemetco violated 40 C.F.R. § 270.10.

89. By placing hazardous waste soil containing zinc oxide, refractory brick and gunning material on the land without first treating the waste to meet Land Disposal Restriction treatment standards, Chemetco violated 40 C.F.R. § 268.90.

90. As a result of its violations of RCRA, Chemetco is subject to a civil penalty in an amount not to exceed \$25,000 per day per violation for violations occurring prior to January 30, 1997, and liable for civil penalties in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997. RCRA Section 3008(g), 42 U.S.C. § 6928(g), as amended by Pub. L. 104-134. See 61 Fed. Reg. 69,360 (1996).

91. Unless enjoined by Order of this Court, Chemetco will continue to violate RCRA.

Fourth Claim for Relief

Section 7003 Imminent and Substantial Endangerment

92. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

93. Since at least September 1996, Chemetco has handled

and/or stored soils contaminated by zinc oxide, which is a "hazardous waste" within the meaning of RCRA Section 1004(27), 42 U.S.C. § 6903(27), in wetland areas adjacent to its facility in Hartford, Illinois.

105. The soils contaminated by zinc oxide in the wetland area adjacent to the Chemetco facility may present an imminent and substantial endangerment to health or the environment.

106. Chemetco's handling and/or storage of soils contaminated with zinc oxide in the wetland area adjacent to its facility constitutes a violation of RCRA Section 7003, 42 U.S.C. § 6928.

107. As a result of this violation, Defendant is subject to injunctive relief restraining its handling, storage, treatment, transportation or disposal of wastes to eliminate such threat of imminent and substantial endangerment.

108. Unless enjoined by Order of this Court, Chemetco will continue to violate RCRA Section 7003.

Prayer for Relief

WHEREFORE, Plaintiff, the United States of America, requests that this Court:

1. Enjoin the Defendant from further violations of CWA and RCRA;
2. Order the Defendant to remediate those areas upon which Defendant disposed of hazardous waste soil containing zinc oxide, refractory brick and gunning material;

3. Order Defendant to prepare and implement the Storm Water Pollution Prevention Plan, as required by Defendant's 1996 NPDES, permit to fully address the overall reduction of pollutants present in the Hartford Facility's storm water discharges, including but not limited to the design and construction of necessary systems for storm water collection and treatment, and of new discharge pipes and outfall structures.

4. Assess civil penalties against the Defendant of up to \$25,000 per day, per each violation of the CWA and RCRA occurring before January 30, 1997, and \$27,500 per day, per each such violation occurring on or after January 30, 1997.

5. Award the United States its costs in this action; and

6. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

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